

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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| KAREN MURPHY |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 193,360 |
| LABETTE COUNTY MEDICAL CENTER |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| LIBERTY MUTUAL INSURANCE COMPANY |) | |
| Insurance Carrier |) | |

ORDER

Respondent appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 19, 1998. The Appeals Board heard oral argument November 4, 1998.

APPEARANCES

Diane F. Barger of Wichita, Kansas, appeared on behalf of claimant. Jeffry L. Jack of Parsons, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The issues on appeal are: (1) the nature and extent of claimant's disability; and, (2) the amount of compensation due. The ALJ found claimant is permanently totally disabled due, in part, to depression and anxiety which the ALJ found to be directly traceable to claimant's compensable back injury. Respondent contends the psychological problems are from other factors, including the fact claimant has contracted hepatitis C. Respondent asks that the award be limited to the disability from the physical injury only.

Claimant contends the award should be affirmed except as to the calculation of benefits. After finding the claimant to be permanently totally disabled, the ALJ awarded the claimant benefits based on a 100 percent permanent partial disability rather than permanent total disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds the Award should be modified. The Board agrees with and affirms the finding that claimant is permanently and totally disabled but modifies the award to one for the maximum benefit of \$125,000.

Findings of Fact

1. Claimant began working as a phlebotomist for respondent in March 1991.
2. Claimant injured her back on April 19, 1994, while drawing blood from a combative patient. Claimant reported the injury and received treatment first from Dr. Dillon and then from Dr. Philip R. Mills.
3. Dr. Mills was first scheduled to see claimant in December 1994, but the examination was postponed because, in November 1994, claimant was diagnosed with hepatitis C. Dr. Mills rescheduled and saw claimant January 31, 1995. At that time, claimant complained of back pain radiating into her right thigh and hip. Dr. Mills concluded claimant has suffered an aggravation of a previously asymptomatic genetic abnormality. He found claimant to be at maximum medical improvement and rated the condition as 7 percent impairment to the whole body. He recommended she lift only with good body mechanics, avoid prolonged or repetitious forward flexion, avoid stooping, and begin a walking/swimming program. Dr. Mills reviewed task lists prepared by Karen C. Terrill and James T. Molski. Dr. Mills concluded claimant could still do all the tasks but some tasks would need to be modified.
4. After Dr. Mills released claimant, she returned to respondent but was told they had no employment for her at that time. Claimant testified she became very depressed and stopped wanting to leave her house. She has, however, sent résumés to Roche Biomedical Laboratories and to an insurance company which does blood work. She testified that in June, July, and August 1995, she read the want ads every day and called employers for job descriptions. She became discouraged because the jobs required lifting or some work she could not do. Claimant also applied with a number of other employers. She applied at Neosho Memorial Regional Medical Center, Ashley Clinic, IGA, Fast Trip, Burger King, and Taco Mayo.
5. Claimant was seen by Dr. P. Brent Koprivika at the request of claimant's attorney. Dr. Koprivika saw claimant on April 5, 1995. Dr. Koprivika rated the impairment from the

back injury as 24 percent of the body. Dr. Koprivica also noted claimant was depressed and concluded that, as a result of the combination of the physical injury and the psychological condition, claimant was not, at least without vocational training, capable of substantial, gainful employment in the open labor market. He testified that it was his impression the depression was caused by her chronic back pain but stated he would defer to psychiatric experts on this issue.

Dr. Koprivica recommended claimant limit her activities to the sedentary level as defined by *The Dictionary of Occupational Titles* and to no more than 20 hours per week. As to specific restrictions he stated:

[I]t is difficult to specifically assign work restrictions in this situation. With these considerations, as a general rule, I would place work restrictions of allowance of working on a twenty-hour per week basis. In regard to physical demand capabilities, sedentary physical demand as defined by "The Dictionary of Occupational Titles" would be appropriate. Walking and standing requirements in the job should be minimal. Ms. Murphy should do no lifting activities from floor level. She should be restricted from having to do bending, pushing, pulling, twisting or lifting. Finally, she should be allowed to change from sitting to standing or walking on an as-needed basis.

6. Dr. Koprivica reviewed a list of the tasks claimant had performed in the fifteen years before the accident. James T. Molski, a vocational rehabilitation consultant, had applied Dr. Koprivica's restrictions to that list. Dr. Koprivica disagrees with some of Mr. Molski's conclusions. Dr. Koprivica concluded claimant is not now capable of performing 11 of 32 tasks for a 34 percent loss. This calculation did not factor in the fact claimant can work only 50 percent of the time. He opined that if you eliminate one-half of the remaining 66 percent of the tasks, the total task loss is 67 percent, consisting of the 34 percent plus one-half of 66 percent.

7. Claimant's personal physician referred her to the Four County Mental Health Center to address the depression and anxiety. The intake summary taken in August 1995 for the Mental Health Center mentions the hepatitis C but not the back injury. In fact, claimant related the onset of depression to the initial effects of Hepatitis C:

Karen reported she has experienced the anxiety since February of this year, but has experienced the depressive symptomatology since about November of last year when she began experiencing the effects of the disease.

A second intake summary was done in January 1997. At that time, claimant reported depression beginning in April 1994, the month her back injury occurred.

8. At Four County Mental Health Center, claimant was treated by Dr. V. J. Reddy, a board-certified psychiatrist. Dr. Reddy first saw claimant September 28, 1995. His notes

from that initial visit refer to the hepatitis C but also mention the back injury, not being able to work, and difficulty sleeping with pain which wakes her up, along with a number of other potentially contributing factors. Dr. Reddy recorded anxiety, panic, and depression. Dr. Reedy initially diagnosed major depression and later dysthymic disorder which is a longer period of depression, at least two years.

9. Dr. Reddy refuses to give an opinion about whether claimant's psychiatric condition is "directly traceable" to her back injury. But he does describe the back injury as having an effect on her depression and anxiety and states it appears to be a major factor involved in the depression and anxiety.

10. Claimant's hepatitis C was determined to be in remission as of December 3, 1996.

11. On October 10, 1995, claimant was examined by Dr. Robert K. Thomen at the request of the Social Security Administration to determine whether she qualified for social security disability benefits. Dr. Thomen concluded claimant was "limited in her work" due to back pain and depression. He noted she had little difficulty walking, was able to sit for less than two hours, was able to stand with some pain, and will be unable to lift, push, pull, or carry. Dr. Thomen gave no opinion as to the cause of either the back pain or depression.

12. Claimant was evaluated, at the request of her counsel, by Dr. Gilbert R. Parks on November 7, 1996. He diagnosed major depression, anxiety, hepatitis C, low back injury, and degenerative joint disease. He concluded the psychiatric diagnosis is directly traceable to the low back injury. He also opined that her psychological impairment renders her both physically and psychologically disabled and unable to perform any type of gainful employment. The information claimant provided Dr. Parks was inaccurate and incomplete in many respects. Claimant advised him, for example, she was married and widowed, had no family history of severe emotional problems, had no history of prior workers compensation claims, and had not used alcohol or drugs. Much of this information was incorrect, misleading, or incomplete.

13. On April 22, 1996, Dr. Pedro A. Murati performed an evaluation at the request of the ALJ. Dr. Murati diagnosed right L5 radiculopathy and lumbosacral strain. He assigned a 10 percent whole body impairment rating and recommended restrictions. He advised she avoid climbing ladders, engage in only occasional sitting, standing, walking, bending, climbing stairs, squatting, crawling, driving, and use of repetitive foot controls. He opined she can lift, carry, push, or pull 20 pounds occasionally, 10 pounds frequently, and 5 pounds constantly.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. Claimant suffered a compensable physical injury on April 19, 1994.

3. Psychological injury is compensable only if it is directly traceable to a compensable physical injury. *Love v. McDonald's Restaurant*, 13 Kan. App. 2d 397, 771 P.2d 557, rev. denied 245 Kan. 784 (1989). A psychological injury may be considered to be directly traceable to the physical injury even where other factors also contribute. *Barr v. Builders, Inc.*, 179 Kan. 617, 296 P.2d 1106 (1956).

4. The Board finds claimant's psychological injury, depression, and anxiety are directly traceable to her back injury. This conclusion is based on claimant's testimony, the testimony of Dr. Reddy, and the testimony of Dr. Parks. While Dr. Reddy refused to give an opinion using the terms "directly traceable," his testimony in general seems to attribute the psychological problems, in significant part, to the back injury. Respondent points out that claimant first gave a history that relates the psychological problems to the diagnosis of hepatitis C. Although this is true, Dr. Reddy was aware of this fact and nevertheless considered the back injury to be a significant factor. Respondent asks the Board to completely disregard Dr. Parks because Dr. Parks had an incomplete and inaccurate history. Again, this is true, but the Board concludes Dr. Parks' opinion is entitled some weight on this issue. The Board concludes, based on the record as a whole, the evidence establishes the requisite connection between the physical and the psychological so that the psychological problems are also compensable.

5. K.S.A. 44-510c(2) defines permanent total disability as the permanent inability to engage in any substantial and gainful employment. This definition is further explained in *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 872 P.2d 299 (1993). The *Wardlow* decision states that an employee is permanently and totally disabled if he/she is "essentially and realistically" unemployable.

6. The Board finds claimant is permanently and totally disabled.

7. Benefits for a permanent total disability are \$125,000 paid at the rate of 66⅔ percent of the average weekly wage not to exceed the maximum weekly rate applicable at the time of the accident. Claimant's average weekly wage was \$286.96 and the weekly rate is, therefore, \$191.32. Claimant is, therefore, entitled to 653.36 weeks at the rate of \$191.32.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 19, 1998, should be, and is hereby, modified.

WHEREFORE AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Karen Murphy, and against the respondent, Labette County Medical Center, and its insurance carrier, Liberty Mutual Insurance Company, for an accidental injury which occurred April 19, 1994, and based upon an average weekly wage of \$286.96, for 37.87 weeks of temporary total disability compensation at the rate of \$191.32 per week or \$7,245.29, followed by 615.49 weeks at the rate of \$191.32 per week or \$117,754.71 for a permanent total disability, making a total award of \$125,000.

As of November 30, 1998, there is due and owing claimant 37.87 weeks of temporary total disability compensation at the rate of \$191.32 per week or \$7,245.29, followed by 202.99 weeks of permanent total disability compensation at the rate of \$191.32 per week in the sum of \$38,836.05, for a total of \$46,081.34 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$78,918.66 is to be paid for 412.5 weeks at the rate of \$191.32 per week, until fully paid or further order of the Director.

The Appeals Board also approves and adopts all other orders entered by the Award not inconsistent herewith.

IT IS SO ORDERED.

Dated this ____ day of November 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Jeffrey L. Jack, Parsons, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director